FRONT Report LINE

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Officers limited by boundaries

OFF LIMITS

A recent decision by the 8th Circuit Court of Appeals dealing with a municipal Missouri peace officer who made an arrest outside his city limits emphasizes there are geographic limits to a peace officer's authority.

In *Abbott v. City of Crocke*r, the officer believed the suspect in a vehicle might be intoxicated. When the suspect left the officer's city, the officer radioed the sheriff's department to ask if it was "OK" to make a stop.

The court stated this authorization does not give the officer jurisdiction to make an arrest.

The stop resulted in a struggle to handcuff the suspect, who sued claiming his civil rights were violated because the officer had no authority to arrest and, therefore, the use of *any* force to make an illegal arrest was unconstitutional.

The court suggested that making an arrest outside your jurisdiction could be an "unreasonable seizure" and, therefore, could be unconstitutional.

Training, juvenile legislation top AG's agenda

ATTORNEY GENERAL'S UPDATE

By Attorney General **Jay**

I **welcomed** the opportunity this summer to meet with law enforcement officers throughout the state at six training sessions sponsored by the Missouri Police Chiefs Association.

These meetings have been valuable in supporting the efforts of the law enforcement community to improve training and to promote communication among all levels of law enforcement.

The training sessions also gave us a chance to discuss legislative changes needed in Missouri to address the growing problem of juvenile crime.

During the 1994 legislative session, a comprehensive crime measure with a focus on juvenile justice came to a frustrating end when a controversial concealed weapons proposal was attached to it.

We knew then we had to redouble our efforts in 1995.

We will be back next year with an even better plan that holds juveniles accountable.

We will propose legislation allowing juveniles 14 and older who commit violent crimes to be certified as adults and we will push

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More law training

With the enactment of continuing education requirements, the AG's Office has worked to provide more training to assist the law enforcement community.

In the last year, our attorneys have spoken to thousands of peace officers. Several of the attorneys are certified instructors and we plan to get the training approved by the POST Commission to meet the continuing education requirements.

AG hoopsters playing Grandview PD

The AG's basketball team, led by Attorney General Jay Nixon, will play the Grandview Police Department in a benefit game for Grandview's DARE program. The matchup will be Sept. 22 at 7 p.m. at the Grandview High School, 2300 High Grove Road. The game will follow a police training session conducted by the AG staff.

SUMMARY: CRIMINAL LEGISLATION

SEVERAL CHANGES were made in the law during the last legislative session that will affect law enforcement. Most of these laws took effect Aug. 28.

Sex Crimes

SB 693 made several changes to Missouri's sex crimes statutes.

1. By statute, evidence of other instances of sexual misconduct by the defendant may be admitted at trial if the defendant is charged with a sex crime where the victim is younger than 14.
2. Statutory rape is criminal only if the defendant is older than 20 or the victim is younger than 14.
3. Sex offenders must register with the chief law enforcement officer of the city or county in which they reside. Failure to do so is a misdemeanor.

Truth in sentencing

SB 763 requires defendants convicted of certain crimes to serve 85 percent of their sentences before being eligible for parole. Those convictions are:

- arson in the first degree
- assault in the first degree
- forcible rape
- forcible sodomy
- kidnapping
- robbery in the first degree
- murder in the second degree

Repeat offenders also now have minimum sentencing schedules they must serve based on the number of their prior convictions.

Closed criminal records

SB 554 clarifies an issue that has been uncertain for years — are investigative files open or closed?

Section 610.100 now says "notwithstanding any other provision of law, investigative reports of all law enforcement agencies are closed records until such time as an arrest is made."

There are other provisions in the Sunshine Law applicable to records to be used for prosecution. We strongly recommend that you contact your prosecutor if you get a request for reports after an arrest has been made.

Police training

SBs 475 and **595** state that all persons wishing to be peace officers beginning Aug. 28, 1995, must complete 470 hours of training to be eligible for employment. Beginning Aug. 28, 1996, continuing education will be necessary for peace officers to retain their certification. The POST Commission is authorized to set specific standards for the continuing education requirements.

Investigative subpoenas

New **Section 56.085** gives your prosecutor authority to request a subpoena for a witness who is part of a criminal investigation. This is a substantial investigative tool that has a potential to greatly increase our ability to investigate crimes. Under prior law, subpoenas could not be issued unless charges had been filed, and even then subpoenas could be served only in limited circumstances.

ATTORNEY GENERAL'S UPDATE

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for legislation that puts violent juveniles and those who violate court orders into a secure detention facility.

We also will push for a system that will allow the courts to share information on violent offenders with the appropriate school staff.

Input from the law enforcement community can make the difference when it comes to drafting legislation. We are learning to work smarter to push for laws that effectively address juvenile justice.

I am confident we will see positive results in 1995.

Front Line Report is published on a periodic basis by the Office of the Missouri Attorney General, and is distributed to law enforcement officials throughout the state.

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UPDATE: CASE LAWS

SUPREME COURT

State v. Eduard Rodriguez
No. 76620
(Mo.banc, May 26, 1994)

The defendant consented to a search of his tractor-trailer when he stopped at a weigh station. Inspectors called the State Highway Patrol after noticing he had no Interstate Commerce Commission number, he had discrepancies in his paperwork, the vehicle was not ventilated, and the load was secured by three padlocks.

The court held:

1. Permanent checkpoints at which all or nearly all of the commercial vehicles are required to submit to weighing and inspection constitute reasonable seizures within the Fourth Amendment; and
2. The commercial motor vehicle inspectors and the Highway Patrol trooper were objectively authorized and legally permitted to inspect the tractor-trailer for violations of Missouri safety laws and regulations.

That the inspectors had a different, subjective motive for their objectively lawful actions is irrelevant to the Fourth Amendment claim provided the length of the stop is not unreasonable. The inspection and questioning lasted about 25 minutes and were consistent with inspection requirements.

State v. Jessie Wise
No. 73648
(Mo.banc, June 21, 1994)

The defendant had no standing to challenge the search of a downstairs unit of an apartment building in which his wife lived. Although the defendant occasionally spent the night with his wife in the upstairs apartment, there was no evidence he ever spent the night in the downstairs apartment. The defendant was in the downstairs apartment merely to use the telephone.

The police properly accompanied the defendant's 14-year-old stepson to the upstairs apartment when the stepson was sent to retrieve personal items for the defendant upon his arrest. The police did not need a warrant to follow the stepson upstairs to retrieve the defendant's shoes, coat and cigarettes. Once legally in the upstairs apartment, police properly seized evidence, which was in plain view.

SOUTHERN DISTRICT

State v. John C. Burke
No. S.D. 18181
(Mo.App., S.D., July 8, 1994)

The defendant voluntarily consented to a search of his rental vehicle. When a trooper stopped the defendant for speeding, he saw duct tape concealing a bumper sticker that identified the vehicle as a rental.

The defendant had a New York drivers license but the vehicle was registered in New Mexico.

When the trooper explained the speeding violation to the defendant, the defendant was unusually nervous — his hands were trembling and his voice was cracking.

Defendant said he had been in New Mexico to visit friends and was returning to his home in New York.

The vehicle was a "one-way rental" from New Mexico to New York. After the defendant signed a written consent to search the vehicle, about 35 pounds of marijuana were found.

State v. George J. Arndt
No. S.D. 18303
(Mo. App., S.D., July 1, 1994)

There was sufficient evidence of the defendant's guilt of second-degree murder for fatally shooting his wife. The only witness who could testify that the defendant committed the crime was deputy coroner Tom Martin. The defendant contended Martin's testimony should not be considered because it was so full of inconsistencies and conflicts that no submissible case could be made.

While the coroner initially considered the victim's death to be a suicide, and offered the murder weapon back to the defendant, he did not have all of the facts when he first visited the scene. The value of his opinion and his credibility were jury questions.

Evidence showed the death was not a suicide and the defendant murdered his wife for financial gain and because he was involved with another woman.

WESTERN DISTRICT

State v. Anna M. Hernandez
No. W.D. 48581
(Mo.App., W.D., July 5, 1994)

The court did not err in refusing a motion to suppress 97 pounds of marijuana on the grounds that the defendant was pretextually detained because she was Hispanic. The court noted that weaving within the lane of traffic was sufficient basis for an investigative stop. As long as the police followed authorized procedures, their motives were irrelevant and not subject to inquiry. Also, the defendant voluntarily consented to the search and even offered to open the trunk for the trooper.

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UPDATE: CASE LAWS

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State v. Leonard Andrews
No. W.D. 46248
(Mo.App., W.D., June 14, 1994)

The trial court did not err in admitting into evidence a statement by the defendant to a polygraph examiner prior to taking a polygraph test. No mention was made at trial that the statement was part of the polygraph proceedings. The jury did not know the statement was obtained preparatory to a polygraph examination. The defendant signed a **Miranda** waiver form.

EASTERN DISTRICT

State v. Bryan Seddens
No. E.D. 60654
(Mo.App., E.D., June 21, 1994)

The trial court properly admitted testimony by a police officer regarding gangs and gang activity. The officer was properly qualified as an expert in this area, considering his practical experience as an officer. The testimony also was relevant. The officer testified about the practices, symbols, terminology and history of street gangs. Most of his testimony dealt with two rival gangs, the Crips and the Bloods. The testimony was used to help the jury understand the implications of many of the case's facts.

State v. Newton Troupe
No. E.D. 61250
(Mo.App., E.D., May 31, 1994)

A defendant who absconded while the jury was deliberating forfeited his right to a direct appeal as well as a post-conviction relief. The court acknowledged the Supreme Court opinion of *Robinson v. State*, 854 S.W.2d 393, 396 (Mo.banc 1993), which held that the escape rule does not apply to dismissed challenges to post-capture errors. The rule will not apply to dismiss post-conviction motions, which challenge errors that occurred after the movant was returned to custody. In this case, the defendant challenged pre-capture errors of the trial.